

SEP 19 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

GAGANDIP SINGH,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-75231

Agency No. A77-829-511

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted September 11, 2006**

Before: PREGERSON, T.G. NELSON, and GRABER, Circuit Judges.

Gagandip Singh, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. To the extent we have jurisdiction, it is conferred by 8

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Singh’s motion to reopen as untimely because Singh filed it more than two years after the BIA’s final decision. *See* 8 C.F.R. § 1003.2(c)(2) (motion to reopen must be filed within 90 days after a final decision is rendered). Further, Singh failed to demonstrate eligibility for equitable tolling. *See Iturribarria*, 321 F.3d at 897-98 (equitable tolling applies “when a petitioner is prevented from filing due to deception, fraud, or error, as long as the petitioner acts with diligence in discovering” the misconduct).

We lack jurisdiction to review Singh’s contention that the BIA should have invoked its sua sponte authority to reopen proceedings. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

Singh’s “miscarriage of justice” argument is unavailing because he has failed to show the BIA erred in denying his motion to reopen as untimely. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (explaining that a petitioner must show error to prevail on a due process challenge).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.